

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 WILLIAM TERRELL, Guardian Ad Litem for
5 QUENTIN SLAGOWSKI, a minor, ANIKA
6 SLAGOWSKI, a minor, and ROWAN
7 SLAGOWSKI, a minor, the ESTATE OF JOHN
8 MICHAEL SLAGOWSKI, by and through its
9 personal representative, PATRICIA DEAN,

10 Plaintiffs,

11 vs.

12 CENTRAL WASHINGTON ASPHALT, INC.,
13 DONALD HANNON, JAMES WENTLAND,
14 JERRY GOLDSMITH,

15 Defendants.

Case No. 2:11-cv-00142-APG-VCF
Consolidated with:
Case no. 2:12-cv-01435-APG-VCF
Case no. 2:12-cv-01475-APG-VCF

REPORT AND RECOMMENDATION

[Unopposed Motion for Determination of Good
Faith Settlement with Kathryn Zemke (ECF NO.
520)]

16 Before the court is Central Washington Asphalt, Inc. and Donald Hannon's Unopposed Motion for
17 Determination of Good Faith Settlement with Kathryn Zemke (ECF No. 520). The court held a hearing
18 on August 8, 2016 and heard representations from the parties.

19 **Motion for Determination of Good Faith Settlement**

20 **A. Relevant Facts**

21 This consolidated litigation arises out of a multi-vehicle collision that occurred on December 12,
22 2010. On December 12, 2010, Defendants James Wentland, Jerry Goldsmith, and Donald Hannon were
23 driving trucks owned by Defendant Central Washington Asphalt, Inc. They were headed southbound on
24 Nevada State Route 318, a two-lane road. Ms. Zemke alleges that on this date, Hannon, James Wentland
25 and Jerry Goldsmith, employees of CWA, caused the accident which injured Zemke and several others.
The CWA Defendants deny liability. Wentland and Goldsmith have been dismissed on summary
judgment. (ECF No. 504). Ms. Zemke has now negotiated a settlement.

1 **1. Relevant Law**

2 Pursuant to Nevada Revised Statute §17.245, “[w]hen a release or a covenant not to sue or not to
3 enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or
4 the same wrongful death: (a) It does not discharge any of the other tortfeasors from liability for the injury
5 or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of
6 any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it,
7 whichever is the greater; and (b) It discharges the tortfeasor to whom it is given from all liability for
8 contribution and for equitable indemnity to any other tortfeasor.”

9 The court in *The Doctors Co. v. Vincent*, stated that, as evidenced by the ruling in *In re MGM*
10 *Grand Hotel Fire Litigation*, “the Nevada Federal District Court embrace[s] the following factors in
11 evaluating good-faith issues under NRS 17.245: [1] [t]he amount paid in settlement, [2] the allocation of
12 the settlement proceeds among plaintiffs, [3] the insurance policy limits of settling defendants, [4] the
13 financial condition of settling defendants, and [5] the existence of collusion, fraud or tortious conduct
14 aimed to injure the interests of non-settling defendants.” *The Doctors Co. v. Vincent*, 120 Nev. 644, 651-
15 52, 98 P.3d 681, 686 (2004)(quoting *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp. 913, 927
16 (D.Nev.1983)). The court also stated that these factors are not exhaustive, and that the determination of
17 good faith settlement “should be left to the discretion of the trial court based upon all relevant facts
18 available...” *Id* at 652 (quoting *Velsicol Chemical v. Davidson*, 107 Nev. 356, 360, 811 P.2d 561, 563
19 (1991)).

20 **2. Discussion**

21 In considering the factors outlined above, the Court recommends granting CWA's Unopposed
22 Motion for Determination of Good Faith Settlement with Kathryn Zemke (ECF No. 520).

23 No opposition has been filed. This constitutes consent to the granting of the motion under Local
24 Rule 7-2(d), which states that “[t]he failure of an opposing party to file point and authorities in response
25 to any motion shall constitute a consent to the granting of the motion.”

1 The Court has reviewed the instant motion and finds that the proposed settlement satisfies section
2 17.245's good-faith requirement. The court's finding is predicated on three of the MGM factors. With
3 regard to the first factor, Central Washington proposes compensating Ms. Zemke \$400,000.00 for her
4 injuries, medical bills, pain and suffering, and the disruption to her daily living. (ECF No. 520 at 3). This
5 amount, which is "the prime badge" for determining good faith, *see MGM Grand Hotel Fire Litig.*, 570
6 F. Supp. at 927, represents a fair and reasonable amount in light of the nature of her injuries. *Id.* This
7 proposed settlement amount will help avoid substantial future litigation costs that will be incurred in
8 preparation for trial. *Id.*

9 With regard to the second factor, the proposed settlement amount appears fair and reasonable under
10 Central Washington's insurance policy limit, *see MGM Grand Hotel Fire Litig.*, 570 F. Supp. at 927,
11 which is nine million dollars. (ECF No. 520 at 3).

12 Finally, the propose settlement agreement was apparently reached in good faith because collusion,
13 fraud, and other tortious conduct aimed to injure the interests of non-settling defendants is absent. *MGM*
14 *Grand Hotel Fire Litig.*, 570 F. Supp. at 927. The proposed settlement was reached after substantial
15 discovery, including (1) the depositions of all of the parties, their experts, and relevant witnesses, (2)
16 discussions as to each party's likelihood of success at trial, and (3) mediation in December 2014. (ECF
17 NO. 520).

18 Based on the foregoing and all of the relevant facts surrounding the settlement, the undersigned
19 finds that the settlement was reached in good faith.

20 Accordingly, and for good cause shown,

21 IT IS THE RECOMMENDATION of the undersigned United States Magistrate Judge that the
22 District Judge GRANT Central Washington Asphalt, Inc. and Donald Hannon's Unopposed Motion for

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Determination of Good Faith Settlement with Kathryn Zemke (ECF No. 520).

DATED this 8th day of August, 2016.



CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE